

1 **BEFORE THE PUBLIC UTILITY COMMISSION**

2 **OF OREGON**

3 **UM 1744**

4 In the Matter of

5 NORTHWEST NATURAL GAS
6 COMPANY, dba NW NATURAL

7 Application for Approval of an Emission
8 Reduction Program.

STAFF'S CROSS-REPLY BRIEF

9 **1. Introduction**

10 Staff of the Public Utility Commission of Oregon (Commission) submits its Cross-Reply
11 Brief in response to the Post-Hearing Briefs filed by Northwest Industrial Gas Users (NWIGU);
12 PacifiCorp; the Citizens' Utility Board of Oregon (CUB); and Portland General Electric
13 Company (PGE).

14 Staff either supports, or does not disagree with, the arguments on the primary outstanding
15 issues submitted by NWIGU and CUB. Having said that, it is important to note that while Staff
16 generally agrees with the positions taken by CUB and NWIGU in their respective Post-Hearing
17 Briefs, to the extent Staff's Post-Hearing Brief presents a different analysis or recommendation
18 on a particular issue, Staff's Post-Hearing Brief represents Staff's position on the issue. Most
19 notably, Staff has a different recommendation on the scope and application of an earnings test
20 than does CUB.

21 Further, Staff would like to expressly state that it agrees with NWIGU's position that the
22 CHP Program should be reevaluated whenever major assumptions change, such as the enactment
23 of new comprehensive carbon regulation. *See* NWIGU Post-Hearing Brief at 9-10. This
24 approach is a sensible one that Staff believes NWN likely supports as well.

25 The remainder of this Cross-Reply Brief will concern Staff's disagreement with the
26 positions taken by PGE and PacifiCorp on the following issues:

1 project constitutes “fuel switching” as the concept has been explored by the Commission in the
2 past, if the project meets the ORS 757.539 criteria, it is not unlawful simply because it promotes
3 the use of natural gas in place of another fuel source. *See, e.g.*, ORS 757.539(3)(a) (expressly
4 requiring that a project involve the use of natural gas).

5 *B. Use of ETO funds collected from electric utility ratepayers for NWN’s CHP*
6 *Program is consistent with past Commission precedent.*

7 PGE argues that use of ETO funds to provide part of the incentives to CHP Program
8 participants (Participants) would be poor policy for the Commission to adopt. PGE Post-Hearing
9 Brief at 8. PGE goes on to explain that “If the Commission were to decide that the proposed
10 program should be eligible for ETO incentives, those incentives should rightly be sourced from
11 funds collected from NWN customers for natural gas efficiency, not electric efficiency funds.”
12 *Id.*

13 While Staff has not previously weighed-in on this issue in its briefs, CUB and NWN have
14 done so. Staff agrees with their respective analyses.

15 In reviewing this issue, it is important to know that the Oregon Department of Justice
16 (DOJ) previously concluded that the law does not preclude the use of funds collected for electric
17 efficiency to be used for CHP programs. *See* PGE/101, Barra/1-4 (DOJ advisory letter dated
18 May 18, 2005).¹ And, CUB correctly observes that the Commission *already* allows ETO funds
19 to be spent to incentivize CHP projects. CUB/200, McGovern/2-3; CUB Prehearing Brief at 15.
20 Staff agrees with CUB that, in light of these circumstances and history, the Commission should
21 not use the current docket to change its current policy of allowing ETO funds to be used to
22 incentivize CHP facilities. CUB Post-Hearing Brief at 18.

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26 ¹ PGE witness Barra testified that “PGE does not question the legal underpinnings [of the DOJ
advisory letter] but rather questions as a matter of policy, whether this should be the sanctioned
policy approach.” PGE/100, Barra/3.

1 NWN presented a similar analysis and conclusion in its prior briefings. *See* NWN
2 Prehearing Brief at 16-17; NWN Post-Hearing Brief at 30. Staff agrees with the Company's
3 analysis of this issue.

4 C. *Whether NWN has shown that it would not invest in the CHP Program in its*
5 *ordinary course of business without the mechanisms provided by ORS 757.539.*

6 PacifiCorp correctly states that ORS 757.539(3)(d) requires NWN to show that it would
7 not invest in the CHP Program in the "ordinary course of business" without the emission
8 program and mechanisms provided by the statute. PacifiCorp then walks through a statutory
9 analysis of ORS 757.539(3)(d) and concludes that, if a program increases utility margin revenue,
10 the proposing utility "has an ordinary course of business interest in pursuing the program."
11 PacifiCorp Post-Hearing Brief at 3. PacifiCorp concludes its discussion by stating "Ultimately,
12 the question comes down to establishing the correct level of incentive and whether it is sufficient
13 to incentivize the utility to invest in the program or engage in certain behavior that it would not
14 otherwise invest or engage in." PacifiCorp Post-Hearing Brief at 3-4.²

15 Staff is uncertain of what to make of PacifiCorp's argument on this issue. PacifiCorp
16 seems to be trying to be careful to avoid directly asserting that NWN failed to establish that it
17 would not invest in the CHP Program in the ordinary course of its business. As such, it can
18 fairly be said that PacifiCorp is merely presenting what it views as a *possible* issue. PacifiCorp
19 certainly has not made a convincing case to support its hypothesis on this matter.

20 Having said this, Staff recognizes that in its Prehearing Brief, PacifiCorp made an
21 additional assertion: that NWN had previously attempted to invest in CHP as part of its ordinary
22 business by means of a former tariff offering to its customers. PacifiCorp Prehearing Brief at 3-
23 4. PacifiCorp goes on to note, as it must, that NWN's prior attempt in the CHP-promotion area
24 ended when no customer requested service under the former tariffs. PacifiCorp Brief at 4,
25 footnote 2.

26 ² Staff notes that PGE made similar arguments in its Prehearing Brief but, for unclear reasons,
did not repeat them in its Post-Hearing Brief.

